

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	2:08-cr-00060-GMN-LRL
v.)	
)	MOTION TO SUPPRESS (#19)
NORMAN MARTIN,)	
)	
Defendant.)	
_____)	

REPORT & RECOMMENDATION

The defendant, Norman Martin, is under indictment on one count of Felon in Possession of a Firearm and one count of Felon in Possession of Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924 (a)(2). The firearms and ammunition were seized during the execution of a search warrant. Martin has filed a Motion to Suppress (#19), in which he contends that the affidavit in support of the search warrant was facially deficient in that it did not provide probable cause to search Martin's residence. Accordingly, he argues that the seized firearms and ammunition, as well as statements he made when the warrant was executed, should be suppressed as fruits of an unlawful search. The court has considered the motion, the government's Opposition (#20), and defendant's Reply (#23).

BACKGROUND¹

On May 1, 2006, Detective Andrade of the Las Vegas Metropolitan Police Department ("Metro") was contacted by a concerned citizen, who told Det. Andrade that Martin was involved in various illegal activities, including selling prescription medicine and methamphetamine, forging checks

¹ The following facts are taken from Det. Andrade's affidavit in support of the warrant, attached as Exh. A to the motion.

1 and DMV documents, as well as possessing stolen property and/or guns. Asked how he came to know
2 these things, the citizen stated that an associate of his had firsthand information and had witnessed
3 illegal activities. Det. Andrade agreed to meet with the citizen and to arrange a meeting with the
4 associate.

5 On May 3, 2006, Det. Andrade met with the citizen and was introduced to his associate, the
6 confidential informant ("CI").² The CI stated that a black adult male by the name of Norman Martin
7 resided at 1313 Pyramid Drive in Las Vegas, with his wife Angela Martin. The CI indicated that
8 Martin's adult daughter and son, Alicia and Anthony, also resided at that address. The CI said that he
9 had known Martin for a couple of years and had lived or slept in Martin's home for the past few years.

10 The CI reported that Martin was involved in numerous illegal activities including drug sales,
11 possession of firearms, and falsifying prescriptions, identifications, and DMV plates and tags. The CI
12 specifically alleged that Martin possessed several weapons, including a .38 caliber revolver and a Tech-
13 9 submachine pistol, which he allegedly kept in a back room at the rear of the residence. The back room
14 was reportedly an enclosed patio. He also stated that Martin kept one of the guns inside a safe located
15 on a shelf against a wall in the back room. He claimed that it was not uncommon for Martin to step out
16 the backdoor of the enclosed patio and discharge the Tech-9 pistol in the air. The CI further said Martin
17 kept the Tech-9 in a hidden compartment in the back room at the base of the bar with a padlock on it.
18 The CI stated that he had seen Martin carrying a gun on his person in the house during drug transactions
19 and that Martin liked guns. The CI acknowledged last seeing the firearms in the residence
20 approximately two weeks before the interview with Det. Andrade.

21 The CI also alleged that Martin sold methamphetamine and prescription medicine from the 1313
22 Pyramid Drive address, and that Martin kept half-ounce quantities of methamphetamine in the house.
23 He said he had personally seen narcotics being sold and offered for sale at the residence. The CI stated
24

25 ² A recording of Det. Andrade's interview with the CI was provided with Andrade's affidavit in support of his
26 warrant application and is attached as Exhibit A-1 to the instant motion.

1 that numerous people come and go from the house and purchase methamphetamine and prescription
2 drugs on a regular basis, and that there is heavy foot and vehicle traffic as people approach the
3 residence. The CI further admitted to purchasing and receiving methamphetamine from Martin on a
4 daily basis over the past few years. He said that Martin has numerous individuals coming over and
5 hanging out in the back room getting high.

6 When asked about his motive for providing the information, the CI said he was tired of seeing
7 Martin take advantage of other people and do them wrong by stealing from them. When asked if he
8 expected anything in return for cooperating, the CI said no. The CI had six outstanding warrants.
9 While Det. Andrade did not make any promises to the CI, he told him that his cooperation would be
10 conveyed to the District Attorney's office and might help to get the warrants on calendar for ultimate
11 resolution.

12 In the days following the interview, Det. Andrade set out to corroborate the CI's information.
13 A records check on the property confirmed that a Norman and Angela Martin owned the 1313 Pyramid
14 Drive residence, and an Accurint records checks showed that a Norman Martin and an Anthony Martin
15 resided at that address. A Scope records check confirmed 1313 Pyramid Drive as the residential address
16 for Norman, Angela, and Anthony Martin. Criminal background checks revealed Norman Martin to be
17 a four time registered convicted felon for Possession of a Controlled Substance With Intent to Sell,
18 Threatening a Murder, Assault/Battery, and four counts Unlawful Distribution of Cocaine.

19 Det. Andrade set up surveillance on the home from May 2 through May 5, 2006. He did not
20 witness criminal activity but saw multiple vehicles parked in the garage, driveway and curbside, all
21 appearing to have a thirty day temporary DMV registration tag and no license plate. On two occasions
22 he witnessed Martin exit the residence and walk to the front yard; one of those times Martin opened the
23 door of a pickup truck in the front yard, looked inside, closed the truck door and went back in the house.

24 On May 5, 2006, Det. Andrade conducted a second interview with the CI. The CI told him that
25 there is a large storage shed in the rear of the residence, but most of the activity occurs in the back room.
26 The CI also said that the residence had at least five surveillance cameras all wired to televisions in the

1 back room. He then described the location of the cameras at the residence. He said that one was on the
2 rooftop on top of the air conditioning unit facing east; one was on the window sill inside the window
3 of the northeast bedroom facing east toward the road; and other cameras were mounted on the fascia
4 boards near the garage, including one facing east directly above the garage.

5 On May 8, 2006, Det. Andrade contacted LA Clear to see if any existing investigations were
6 being conducted on the address. He learned that on April 7, 2006, an LVMPD Det. Nelson was listed
7 as a contact for a drug investigation into the 1313 Pyramid Drive address. Det. Andrade contacted Det.
8 Nelson, who advised that on April 7, 2006, he had interviewed a suspect identified as Darren Phillips³
9 who had been arrested in a car stop by a patrol officer for being a felon in possession of two handguns.
10 Det. Nelson said that Phillips had told him about a black male named Norman Martin who resided at
11 1313 Pyramid. He stated that Martin lived with his wife, Angela, and son Tony and also had other
12 people living with him: Homer, Alicia, and a white male named Tim who lived in a storage shed in the
13 back yard. Phillips stated that Martin was involved in fraudulent checks and fake IDs, and also that
14 Martin was selling methamphetamine out of the residence and usually has approximately one ounce in
15 the house at any given time. Phillips further said that Martin had a back room located at the rear of the
16 house, and in that room are televisions wired to surveillance cameras mounted outside the front of the
17 residence. He told Det. Nelson that Martin had protection from Donna Street Crips and GPK gang
18 members to sell methamphetamine from the house, and the gang members would come over at night
19 to hang out in the back room with Martin. Phillips also said that Martin kept numerous firearms in the
20 back room, and he had seen a Tech-9 pistol, an UZI, an AR-15 or SKS type rifle and four or five pistols
21 located in the back room. Phillips further stated that Martin carried a Glock 40 or 380 handgun on his
22 person around the house.

23 Det. Nelson advised that he intended to use Phillips as a CI to conduct a controlled drug buy
24 from the residence, but Phillips never contacted Det. Nelson once released from detention. Det. Nelson

25 ³ Phillips is a four time registered convicted felon out of Nevada for Evading a Police Officer, Robbery,
26 Attempt CCW, and Attempt Larceny from Person.

1 told Det. Andrade that a couple weeks later, Phillips was stopped by a patrol officer, Off. Ploense, in
2 a vehicle stop in front of Martin's residence, from which Off. Ploense recovered some
3 methamphetamine. No further contact with Phillips had been made since Off. Ploense's vehicle stop.
4 Neither Det. Nelson nor Andrade made any promises to assist Phillips with criminal proceedings in
5 exchange for the information he provided.

6 Det. Andrade contacted Off. Ploense, who reported that on April 19, 2006, he made contact
7 with Phillips in two separate incidents. First, Off. Ploense and his partner stopped Phillips driving an
8 unregistered car in front of the 1313 Pyramid address. They wrote several citations and advised him
9 to leave the car parked by the curb and not to drive it. About three hours later, the officers saw the same
10 car driving up to the 1313 Pyramid address and they conducted a second vehicle stop. The car was
11 occupied by three people, Elizabeth Dawkins (driver), Darren Phillips and Keith Martin. During the
12 stop, officers recovered 4.1 grams of methamphetamine and arrested Dawkins for Trafficking
13 Methamphetamine. Keith Martin was also arrested on outstanding warrants, and he reportedly pointed
14 to the 1313 Pyramid house indicating that it was his brother's house. Off. Ploense said that two people
15 exited the house and approached to see what was going on.

16 On May 9, 2006, Det. Andrade conducted additional surveillance of 1313 Pyramid. He saw two
17 surveillance cameras exactly where the CI indicated they would be – one on top of the air conditioning
18 unit and one mounted on the fascia board in the front of the house directly above the garage. Based on
19 the previous purchases of narcotics by the CI, the similar information by the CI and Phillips, and the
20 vehicle stop by Off. Ploense resulting in the recovery of methamphetamine in front of the suspect
21 residence, Det. Andrade concluded that ongoing criminal activity of the sale of methamphetamine and
22 possession of firearms by prohibited persons was occurring at 1313 Pyramid Drive and thus applied for
23 a search warrant of the residence on May 10, 2006.

24 State District Judge Michelle Leavitt signed the warrant, and it was executed on May 11, 2006.⁴
25

26 ⁴ The following facts are as stated in the Continuation Report, attached as Exh. B to the motion.

1 Seven people were detained at the residence when the warrant was executed, including Norman Martin,
2 Anthony Martin, Anthony Mack, Christina Ramirez, Lance Chavez, Rhonda Williams and a seventeen
3 year-old, Heather Duarte. Prior to searching the residence, Det. Andrade conducted preliminary
4 interviews with three of the detained subjects: Martin; Martin's son, Anthony Martin; and Martin's
5 friend, Chavez. Det. Andrade neither informed Martin that he was the primary suspect of the
6 investigation nor did he show Martin a copy of the affidavit, which was sealed to protect the CI. Det.
7 Andrade asked Martin if there was anything he should know about for safety reasons, and Martin stated
8 there was some methamphetamine, marijuana, and two firearms he allegedly admitted were his. Martin
9 showed detectives where his firearms were located in the back room. A Remington 788 bolt-action .243
10 caliber rifle with scope was located on the lower shelf behind the bar in the back room; a Squires
11 Bingham .22 caliber semi-automatic rifle was also located next to the rifle. A box of various
12 ammunition was found on the floor of the room.

13 Martin then gave detectives keys to his padlocks on the refrigerator and a hidden compartment
14 door at the bottom of the bar, as well as the combination to a safe located in the back room behind a
15 computer desk. From the hidden compartment, detectives seized additional ammunition and a detached
16 handgun magazine containing .38 caliber super ammunition. Detectives seized various papers and a
17 floppy disc from a lockbox and located a gun cleaning kit on top of the bar in the back room.
18 Detectives additionally recovered a plastic bag containing 2.8 grams of methamphetamine from a denim
19 skirt and a baggie of marijuana. After determining that the rifles, ammunition, and methamphetamine
20 belonged to Martin, he was arrested and charged.

21 DISCUSSION

22 The Fourth Amendment provides that "the right of the people to be secure in their persons,
23 houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"
24 "Nowhere is the protective force of the fourth amendment more powerful than it is when the sanctity
25 of the home is involved." *Los Angeles Police Protective League v. Gates*, 907 F.2d 879, 884 (9th Cir.
26 1990). A search warrant must be supported by an affidavit establishing probable cause. Probable cause

1 exists when “given all the circumstances set forth in the affidavit . . . there is a fair probability that
2 contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213,
3 238-39 (1983). A judge’s determination of probable cause will be overturned only if it is clearly
4 erroneous. *Stanert*, 762 F.2d 775, 778 (9th Cir. 1985). In making the determination, the court is
5 “limited to the information and circumstances contained within the four corners of the underlying
6 affidavit.” *Id.* “The duty of a reviewing court is simply to ensure that the magistrate had a substantial
7 basis for . . . concluding that probable cause existed.” *Gates*, 462 U.S. at 238 (internal quotations
8 omitted).

9 The affidavit supporting the warrant application at issue here contained information from (1)
10 the CI; (2) statements of Det. Nelson regarding information he gained from Phillips; (3) Det. Andrade’s
11 own observations of the residence; and (4) information provided to Det. Andrade by Off. Ploense.
12 Martin attacks Det. Andrade’s affidavit in support of the warrant as insufficient to give rise to probable
13 cause. *See* Mot. (#19) at 6. Martin alleges that the information relied upon was provided “almost
14 entirely” by a confidential informant lacking a proven track record of reliability, and that the CI’s
15 information was stale insofar as he had not been in Martin’s home for two weeks prior to the warrant.
16 It is further asserted that Det. Andrade did not himself fully believe the CI’s information, and the level
17 and quality of corroboration of the CI’s information is insufficient to support the CI’s credibility.
18 Accordingly, it is argued, the search of Martin’s residence violated his Fourth Amendment rights and
19 all evidence seized must be suppressed. *Id.* Additionally, Martin maintains that his statements to Det.
20 Andrade must be suppressed as the “fruits” of an illegal search and seizure. *Id.*

21 To determine whether an informant’s tip is sufficient to support a finding of probable cause, a
22 court must use a “totality-of-the-circumstances approach” that takes into consideration the informant’s
23 “veracity” or “reliability” and his “basis of knowledge.” *Gates*, 462 U.S. at 238. “[C]ertain classes of
24 informants are considered more reliable than others,” with criminal informants falling in the least
25 reliable class. *United States v. Angulo-Lopez*, 791 F.2d 1394, 1397 (9th Cir. 1986). Accordingly,
26 criminal informants require more evidence to establish their veracity. *Id.* The Ninth Circuit has

1 identified several factors to which a court should look in determining the reliability of an informant's
2 tip. *See United States v. Rowland*, 464 F.3d 899, 907-08 (9th Cir. 2006). These factors include (1)
3 whether the informant is known or anonymous; (2) whether the informant has a proven track record of
4 reliability; (3) the informant's basis of knowledge; and (4) whether the informant "provides detailed
5 predictive information about future events that is corroborated by police observation." *Id.*

6 Several indicia of reliability were present to support the CI's tip. First, the CI was not
7 anonymous, but personally known to Det. Andrade. *See Rowland*, 464 F.3d at 907 ("A known
8 informant's tip is thought to be more reliable than an anonymous informant's tip.") (citing *Florida v.*
9 *J.L.*, 529 U.S. 266, 271 (2000); *Adams v. Williams*, 407 U.S. 143, 146-47 (1972)). Moreover, Det.
10 Andrade knew where to find the CI, which Andrade did when he conducted a second interview; hence
11 Det. Andrade presumably could have held the CI accountable if his information proved to be false.
12 *Rowland*, 464 F.3d at 908 (citing *United States v. Terry-Crespo*, 356 F.3d 1170, 1176 (9th Cir. 2004)
13 (explaining that exposure to legal sanction for providing false information increases reliability of a tip)).

14 Second, the CI clearly had a substantial basis for his knowledge: he personally witnessed
15 Martin's activities while he was living in Martin's house for several years. *See Rowland*, 464 F.3d at
16 908 (an informant's tip is considered more reliable if he is able to reveal his basis for knowledge of the
17 information) (citing *Spinelli v. United States*, 393 U.S. 410, 416 (1969) *abrogated on other grounds by*
18 *Gates*, 462 U.S. at 238)). The CI reported that he had personally obtained methamphetamine from
19 Martin on nearly a daily basis, had seen him sell methamphetamine and offer it for sale at the residence,
20 and had seen Martin keep and carry weapons within the residence. He further identified the occupants
21 of the residence and gave detailed descriptions of the interior of the house based on his own
22 observations.

23 Although the CI was not of proven reliability, the credibility of his information was "enhanced"
24 to the extent that his detailed account of events was corroborated by the statements another informant.
25 *See United States v. Alvarez*, 358 F.3d 1194, 1203 (9th Cir. 2003) (citing *United States v.*
26 *Hernandez-Escarsega*, 886 F.2d 1560, 1566 (9th Cir. 1989). Most of the information the CI provided

1 about Martin, his house, and his activities, including his criminal activities, was corroborated by sources
2 unconnected to him. The interview of Phillips on April 7, 2006 independently tracked the CI's
3 allegation that Martin sold and kept a significant amount of methamphetamine at the residence; that
4 there was a back room in which Martin met with groups of individuals at night; that Martin carried a
5 gun in the residence; that Martin kept a Tech-9 pistol and other firearms in the residence; that Martin
6 had surveillance cameras which fed to a television in the back room; and that Martin was engaged in
7 making fake IDs and fraudulent checks.

8 Moreover, Det. Andrade personally observed surveillance cameras on the home in the precise
9 locations provided by the CI and many vehicles with temporary DMV tags parked at the house. Det.
10 Andrade also ran records checks indicating that Norman Martin and his wife and son did, in fact, reside
11 at the residence as indicated by the CI and Phillips. Finally, Off. Ploense stopped a car containing
12 Phillips in front of the 1313 Pyramid Drive address, and upon locating four grams of methamphetamine,
13 arrested the driver for Trafficking Methamphetamine. While the corroborating information obtained
14 from any one of the above sources on its own may not be enough to establish the reliability of the CI's
15 information, when taken together, and in light of the interlocking nature of the CI's information with
16 Phillip's statements, Det. Andrade's corroboration of various details, and Off. Ploense's statements
17 regarding the vehicle stops, it clearly enhances the reliability of the CI's information regarding the
18 activities at the 1313 Pyramid Drive address. *See Alvarez*, 358 F.3d at 1204 ("The overlapping nature
19 of the informants' tips rendered them credible under circuit precedent."); *Hernandez-Esquarsega*, 886
20 F.2d at 166 ("Although the reliability of several of [the] confidential sources was not clearly established,
21 the detailed nature of many of their statements and the interlocking nature of their stories enhanced their
22 credibility.")⁵

23
24 ⁵ Martin alleges that Det. Andrade's recorded interview with the CI indicates that Det. Andrade did not himself
25 find the CI's statements to be credible. Mot. (#19) at 8. The court disagrees. The court has listened to the interview,
26 which reveals that the last time the CI and Martin interacted, they engaged in a physical altercation – two weeks prior to
the interview. In addition, the concerned citizen who introduced Det. Andrade to the CI is also heard stating their belief
that Martin had stolen property from their home. Accordingly, as Martin notes, Det. Andrade inquired more than once
about the CI's motivation in providing information and whether the CI was really on good enough terms to engage in a
controlled buy from Martin without raising Martin's suspicions. In these circumstances, it is only reasonable and

1 That two weeks had passed between the last time the CI was in the Pyramid Drive residence and
2 the time he talked to Det. Andrade about Martin's criminal activity does not render the CI's information
3 stale for probable cause purposes. To find probable cause, an issuing judge need not determine that the
4 evidence sought is *in fact* on the premises to be searched, or that the evidence is more likely than not
5 to be found where the search takes place. *United States v. Fernandez*, 388 F.3d 1199, 1254 (9th Cir.
6 Cal. 2004) (citing *United States v. Peacock*, 761 F.2d 1313, 1315 (9th Cir. 1985) (emphasis in original,
7 citations omitted), *overruled on other grounds by Gomez v. United States*, 490 U.S. 858 (1989)). The
8 issuing judge need only conclude that it would be reasonable to seek the evidence in the place indicated
9 in the affidavit. *Id.*

10 Here both the CI and Phillips indicated that Martin was engaged in multiple, ongoing criminal
11 enterprises, including drug trafficking. "[I]n the case of drug dealers, evidence is likely to be found
12 where the dealers live." *Angulo-Lopez, supra*, 791 F.2d at 1399. In cases involving narcotics
13 trafficking, lapses of several months, or even up to two years in some circumstances, are not sufficient
14 to render the information in an affidavit too stale to support probable cause. *Fernandez*, 388 F.3d at
15 1254; *see United States v. Pitts*, 6 F.3d 1366, 1369-70 (9th Cir. 1993) (holding that four-month lapse
16 between crack sale involving defendant in different location and affidavit was not enough to render
17 information stale where affidavit supported inference that defendant was "more than a one-time drug
18 seller"); *Angulo-Lopez*, 791 F.2d at 1399 ("With respect to drug trafficking, probable cause may
19 continue for several weeks, if not months, of the last reported instance of suspect activity."); *United*
20 *States v. Dozier*, 844 F.2d 701, 707 (9th Cir. 1988) ("The mere lapse of substantial amounts of time is
21 not controlling in a question of staleness."). Based on the totality of the circumstances, and in light of
22 the *Rowland* factors, the court finds that the issuing judge had a "substantial basis" for her finding of
23 probable cause to search 1313 Pyramid Drive for evidence of ongoing criminal activity. *Gates*, 462

24
25 expected that a detective would test the statements of the CI before spending time attempting to corroborate them. In
26 any event, a spiteful motive is not enough to render an informant's information unreliable. *See United States v. Bishop*,
264 F.3d 919, 925-26 (9th Cir. 2001) ("it would have to be a very naive magistrate who would suppose that a
confidential informant would drop in off the street with such detailed evidence and not have an ulterior motive").

1 U.S. at 238. Having found that the warrant was supported by probable cause, the court need not reach
2 the government's "good faith execution" argument under *United States v. Leon*, 468 U.S. 897 (1984).

3 Lastly, Martin requests an evidentiary hearing. Whether an evidentiary hearing is appropriate
4 rests in the reasoned discretion of the district court." *United States v. Walczak*, 783 F.2d 852, 857 (9th
5 Cir. 1986) (citation omitted). "A hearing will not be held on a defendant's pre-trial motion to suppress
6 merely because a defendant wants one. Rather, the defendant must demonstrate that a 'significant,
7 disputed factual issue' exists such that a hearing is required." *United States v. Harris*, 914 F.2d 927,
8 933 (7th Cir. 1990) (citation omitted). Here, an evidentiary hearing is not warranted because Martin
9 challenges only the affidavit's showing of probable cause. In making the probable cause determination
10 the reviewing court is limited to the information and circumstances contained within the four corners
11 of the affidavit. See *Stanert*, 762 F.2d at 778. In his Reply (#23), however, Martin asks the court to
12 look beyond the facial sufficiency of the affidavit; he challenges the truthfulness of the factual
13 statements made in the affidavit. Yet he doesn't expressly request a *Franks* hearing. Nor could he,
14 because the record is without a foundation for such a request.

15 RECOMMENDATION

16 Based on the foregoing, it is the recommendation of the undersigned United States Magistrate
17 Judge that Martin's Motion to Suppress (#19) should be denied without an evidentiary hearing.

18 DATED this 5th day of October, 2010.

19 

20
21 **LAWRENCE R. LEAVITT**
22 **UNITED STATES MAGISTRATE JUDGE**
23
24
25
26